tions.[24] A recent case contains an unusually sound discussion of these principles. *Pioneer Tel. & Tel. Co.* v. *Westenhaver*, 118 Pac. 354 (Okl.).

ADMIRALTY JURISDICTION OVER TORTS. — The maritime nature [1] of the dispute was the test of jurisdiction of the ancient French admiralty court from the earliest times in the case of both contracts and torts.[2] The English admiralty court was coeval with the French, drew its law from the same sources,[3] and like the French court exercised jurisdiction over all disputes of a maritime nature.[4] But superimposed on this strictly maritime jurisdiction was a territorial jurisdiction over all contracts made on the seas,[5] and all torts committed on the seas.[6] The reason for this territorial jurisdiction, unknown to the Continental law, was, perhaps, that, as at this time the English common-law courts had no cognizance of contracts [7] and torts [8] without their territorial jurisdiction, it was necessary that admiralty should take care of all torts happening on the high seas and all contracts made there. But the courts of common law soon became superior to the admiralty court in England and cut down this ancient bifold jurisdiction in two ways. 1. Now having cognizance of transitory actions, they took exclusive jurisdiction of all contracts [9] and torts [10] not of a maritime nature, happening on the seas.

[24] As illustrations of the manner in which the courts are handling the problem, see Cumberland Tel. & Tel. Co. *v.* R. Commission of Louisiana, 156 Fed. 823; Willcox *v.* Consolidated Gas Co., *supra*; Long Branch *v.* Tintern Manor Water Co., *supra*.

[1] "Maritime" in this connection means "connected with a vessel." See BENEDICT, ADMIRALTY, 4 ed., § 182. See also note 20, *infra*. The French view of "maritime nature" is more liberal. See the citations in note 2, *infra*.

[2] See French Maritime Ordinances of 1400, 1517, and 1681, which may be found in CLEIRAC, US ET COUTUMES DE LA MER, ed. 1788, 191; 1 VALIN, ORDONNANCE DE LA MARINE, ed. 1766, 124, 112, 120, 138, 140, 143; BENEDICT, ADMIRALTY, 4 ed., § 106.

[3] The immediate source of both was the Laws of Oléron. See 1 TWISS, BLACK BOOK OF THE ADMIRALTY, ed. 1871, ix, 88. See also CLEIRAC, US ET COUTUMES DE LA MER, 277, § xix.

[4] The Black Book shows that Admiralty had jurisdiction over certain maritime contracts. See 1 TWISS, BLACK BOOK OF THE ADMIRALTY, 68, 69, § 20. Also over all matters pertaining to admiralty by ancient law. *Ibid.* 83, § 35. This, it is submitted, included all torts of a maritime nature, though no summary of tort jurisdiction is contained in the Black Book. It is true that no instance of the assumption of jurisdiction over a maritime tort on land occurs in the Black Book; but it is submitted that this does not necessitate the conclusion that torts of this kind were not included, for the instances of torts in the Black Book are not numerous, and it may well be that the case of a vessel injuring a pier, which is about the only tort of a maritime nature that can occur on land, did not then arise. But see Story, J., in Thomas *v.* Lane, 2 Sumn. (U. S.) 1, 9, Fed. Cas. No. 13,902, p. 960.

[5] 1 TWISS, BLACK BOOK OF THE ADMIRALTY, 69, § 21.

[6] See Story, J., in De Lovio *v.* Boit, 2 Gall. (U. S.) 398, 406, Fed. Cas. No. 3,776, p. 421. See also 1 TWISS, BLACK BOOK OF THE ADMIRALTY, 45, § 4, 47, § 5, 55, § 14, 109.

[7] See Ward's Case, Latch 4.

[8] See Davis *v.* Yale, 2 Lutw. 946.

[9] Justice Story describes the process by which this was done in De Lovio *v.* Boit, 2 Gall. (U. S.) 398, 407–466, Fed. Cas. No. 3,776, pp. 421–441. The resultant limitation of contract jurisdiction is described in 2 BROWNE, CIVIL LAW AND ADMIRALTY LAW, 2 ed., 1802, 72, 94.

[10] The adjudications depriving admiralty of jurisdiction over non-maritime torts

In so doing they deprived the maritime court of a jurisdiction which had been peculiar to English admiralty law and which had no longer a reason for existence. 2. They took exclusive jurisdiction, also, of all contracts made on land [11] and all torts occurring on land,[12] and thus cut into the most ancient jurisdiction of admiralty, excising many disputes of a maritime nature. But English statutes have since restored to admiralty, jurisdiction over contracts and torts of a maritime nature, made or occurring on land,[13] and have thus assimilated English admiralty law to the ancient Continental law.

As to contracts, the United States admiralty law has, like the ancient Continental law, taken the nature of the subject matter as the sole test of jurisdiction.[14] It is to be noted that this is not adopting the jurisdiction of the ancient English admiralty court, for miscellaneous contracts made on the sea were included in that jurisdiction [15] and are not in United States admiralty jurisdiction.[16] As to torts, it is settled in the United States that no tort not occurring on the water is within admiralty cognizance.[17] Thus a limitation on the ancient Continental admiralty jurisdiction, once possessed by the English admiralty court [18] has been adopted.

Whether torts on the water which are not of a maritime nature are within our admiralty cognizance is still an open question. A recent decision, and the trend of legal opinion in this country, is that they are. *Imbrovek* v. *Hamburg-American Steam Packet Co.*, 190 Fed. 229 (Dist. Ct., D. Md.). But there is a decision in the Circuit Court of Appeals of the Ninth Circuit *contra*.[19] If the District Court decision prevails, our admiralty courts will assume a jurisdiction which, though justifiably enough exercised by the English admiralty court before transitory actions were cognizable at common law, is without basis in the ancient Continental admiralty law, is contrary to the modern English law, and has in fact little reason for existence except that it makes the test of tort jurisdiction comparatively simple.[20] If the contrary decision should prevail, our law

occurring on the seas are comparatively recent. The Queen *v.* City of London Court Judge, [1892] 1 Q. B. 273. *Cf.* Everard *v.* Kendall, L. R. 5 C. P. 428.

[11] See note 9.

[12] Jurisdiction of maritime torts ashore was early prohibited, perhaps before it was ever exercised. Justice Story believed that it never existed. See Thomas *v.* Lane, 2 Sumn. (U. S.), 1, 9, Fed. Cas. No. 13,902, p. 960.

[13] ADMIRALTY COURT ACT, 1861, (24 & 25 VICT. c. 3), §§ 4–11.

[14] Ins. Co. *v.* Dunham, 11 Wall. (U. S.) 1.

[15] See note 5.

[16] There is no express adjudication to this effect but it is nevertheless well recognized law drawn from the *dictum* in Ins. Co. *v.* Dunham, *supra*, 29. See HUGHES, ADMIRALTY, 17.

[17] The Plymouth, 3 Wall. (U. S.) 20; Cleveland, etc. R. Co. *v.* Cleveland Steamship Co., 208 U. S. 316, 28 Sup. Ct. 414.

[18] If, as Justice Story believed, the ancient English admiralty court did not once possess a potential jurisdiction over maritime torts consummated on land, these cases (in note 17) are explainable on the ground that the United States admiralty courts cannot exercise a larger jurisdiction than that of the ancient English admiralty. If this be so, an authoritative decision that torts on the water not of a maritime nature are not within our admiralty jurisdiction would make our tort and contract jurisdictions consistent, in that each would then be that part of the ancient English jurisdiction which was also within the ancient Continental jurisdiction.

[19] Campbell *v.* Hackfeld & Co., 125 Fed. 696.

[20] The argument of simplicity is set forth in 16 HARV. L. REV. 210. That there is some difficulty in applying the test of maritime nature is shown by the conflict between

as to tort jurisdiction would, like that as to contracts, follow the ancient Continental test of the nature of the act, except in the single instance of injuries to things on shore by ships. This exception could then be removed by statute as was done in England.[21]

RECENT CASES.

ADMIRALTY — JURISDICTION: TORTS — MARITIME NATURE. — A contracting stevedore's employee was injured on a vessel by the negligence of the stevedore in failing to supply a safe place to work. *Held*, that this tort is within admiralty jurisdiction. *Imbrovek* v. *Hamburg-American Steam Packet Co.*, 190 Fed. 229 (Dist. Ct., D. Md.) See NOTES, p. 381.

BANKRUPTCY — RIGHTS AND DUTIES OF BANKRUPT — PERJURY IN EXAMINATION. — The Bankruptcy Act, § 7*a* (9), provides that "the bankrupt shall . . . submit to an examination . . . ; but no testimony given by him shall be offered in evidence against him in any criminal proceeding." *Held*, that this provision does not bar a prosecution of the bankrupt for perjury committed in his examination. *Glickstein* v. *United States* (U. S. Sup. Ct., Dec. 4, 1911).

This case settles the law upon a clause as to which there had been a conflict in the authorities. Some cases had held that it applied to perjury, as the language covered all criminal proceedings, and to supply a reservation in the case of perjury similar to that in other federal statutes compelling testimony would amount to judicial legislation. U. S. REV. STAT., 1878, § 860; 27 U. S. STAT. AT LARGE, p. 443, c. 83; *United States* v. *Simon*, 146 Fed. 89. See *In re Logan*, 102 Fed. 876. Others had decided that it did not apply, since that construction would, by removing the penalty for perjury, defeat the obvious intent of Congress to secure truthful testimony. *Edelstein* v. *United States*, 149 Fed. 636; *Wechsler* v. *United States*, 158 Fed. 579. The principal case has wisely adopted this latter view. See 20 HARV. L. REV. 571.

BILLS AND NOTES — DEFENSES — MISREPRESENTATION. — The making of a promissory note was induced by misrepresentations of the payee's agent, which were not intentionally false. *Held*, that the maker has a defense against the payee. *McNeill* v. *Bay Springs Bank*, 56 So. 333 (Miss.).

It is generally held that a contract induced by innocent misrepresentations may be rescinded in equity. *Redgrave* v. *Hurd*, 20 Ch. D. 1; *Wilcox* v. *Iowa Wesleyan University*, 32 Ia. 367. But see *Southern Development Co.* v. *Silva*, 125 U. S. 247. By the weight of authority this does not constitute a defense at law. *Kennedy* v. *Panama, etc. Mail Co.*, L. R. 2 Q. B. 580; *King* v. *Eagle Mills*, 10 All. (Mass.) 548. *Contra*, *Kirschbaum* v. *Jasspon*, 123 Mich. 314, 82 N. W. 69. A distinction should be made between the cases where the misrepresentations are relied on to found an action of tort for damages, and where as in the principal case they are used to avoid a contract. In the former cases it is sought to impose a liability for making innocent misrepresentations. In the latter, it is sought to prevent the person making these misrepresentations from reaping any benefit from them. In the latter cases, on principle, relief should be allowed

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the principal case and the Ninth Circuit case as to whether the tort of a contracting stevedore is maritime. But the paramount advantages of this test are shown in 18 HARV. L. REV. 299.

[21] ADMIRALTY COURT ACT, 1861, (24 & 25 VICT. c. 3), § 7.